

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRANDON OGBOLU, :
Plaintiff, : 21-CV-1697 (JPO) (RWL)
: :
- against - : ORDER
: :
THE TRUSTEES OF COLUMBIA :
UNIVERSITY, et al. :
Defendants. :
: :
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ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves matters raised at Dkt. 45, 58, and 61-64.

1. **Motion For Leave To Amend:** Plaintiff requests leave to file a third amended complaint adding several additional causes of action. (Dkt. 58.) Defendants oppose based on grounds of futility. (Dkt. 57.) Prior to Plaintiff's motion, Defendants expressed their intent to move to dismiss the Second Amended Complaint if the Court did not otherwise dismiss it sua sponte. (Dkt. 45, 61.) Having reviewed the submissions and other pleadings in the case, the Court believes that Defendants' proposed motion to dismiss is likely to have merit with respect to some or all of both the existing claims and the additional claims that Plaintiff seeks to add. So that the issues may be dealt with comprehensively, the Court **GRANTS** Plaintiff leave to file the proposed Third Amended Complaint attached as Exhibit 1 to Dkt. 58. Plaintiff shall file the Third Amended Complaint no later than July 2, 2021. Plaintiff shall not file any additional amended complaints or motions for leave to amend while the motion to dismiss is pending.

2. **Motion to Dismiss:** Notwithstanding Defendants' invitation to the Court to dismiss Plaintiff's claims sua sponte, the Court is of the view that briefing would be

appropriate. Accordingly, Defendants' request for leave to file a motion to dismiss (Dkt. 45, 61) is **GRANTED**. Defendants shall file their motion papers by **July 26, 2021**. Plaintiff shall file any opposition by **September 1, 2021**. Defendants shall file a reply, if any, by **September 22, 2021**.

3. Discovery: Defendant's request to stay (Dkt. 61) is **GRANTED**. All discovery is **STAYED** pending determination of Defendant's motion to dismiss. Accordingly, the parties need not fulfill the requirements or complete the forms for the initial pretrial conference at this time. The Court still plans to hold the conference (by telephone) as scheduled.

4. Alleged Bias: Plaintiff has filed multiple letters raising concerns about potential bias based on the actions of then Chief Judge McMahon and an alleged "working relationship" with Defendant Andrew W. Schilling. (Dkt. 62, 64.) There is no impropriety or bias, nor appearance of impropriety or bias whatsoever. The October 4, 2007 press release submitted by Plaintiff merely shows that 14 years ago Mr. Schilling served as an Assistant U.S. Attorney in a case for which Judge McMahon was the presiding judge. Plaintiff also raises concerns that then Chief Judge McMahon "reassigned the case to herself." Pro se cases often are reviewed in the first instance by the Chief Judge as occurred here; the case had not previously been assigned to any other judge. In any event, the case has since been assigned to Judge Oetken. Plaintiff further raises concerns that one or more cases cited by the Court in its order dated April 1, 2021 (Dkt. 14) included a party who engaged in criminal conduct. The citations to those civil cases involving certain analogous facts were entirely appropriate and do not reflect any bias; nor do they liken Plaintiff to a criminal. Plaintiff misapprehends the purposes for

which the cases were cited. Plaintiff's request to strike such material (Dkt. 62 at 2, Dkt. 64 at 1) is therefore **DENIED**. Plaintiff can be assured that the Court does not afford preferential treatment to any party.

5. Initial Complaint: Plaintiff expresses concern that the initial complaint he filed was and remains under seal. (Dkt. 62 at 1-2.) The explanation for that is Plaintiff's having moved at the outset to proceed under a pseudonym (Dkt. 3); the documents filed under seal include both the redacted and unredacted version of the initial complaint. The Court agrees that since Plaintiff's application to proceed under a pseudonym was denied (Dkt. 14), the documents filed at Dkt. 1 may be unsealed. Accordingly, the Court **respectfully requests the Clerk of Court to unseal and allow public access to Dkt. 1** in this matter.

6. Nature of Suit: Plaintiff requests that the "Nature of Suit" designation of this case be changed from "448 Civil Rights – Education" as initially filed to "470 Other Statutes – Racketeer Influenced Corrupt Organizations" (Dkt. 63), inasmuch as Plaintiff amended his pleading to include RICO claims. Without regard to whether the RICO claims have any merit, the Court **respectfully requests the Clerk of Court to change the "Nature of Suit" as requested.**

7. Any other issues raised by Plaintiff in the docket entries referenced herein and not discussed above have been considered by the Court and found to be without merit.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: June 24, 2021
New York, New York

Copies transmitted this date to all counsel of record.